



CRIMINALISATION OF LABOUR OFFENCES

In cooperation with Progressive Policies

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Stealing is a crime. Unless you are an employer who underpays your workers. Or a manager who actively intimidates workers for joining a union, or obstructs the work of a works council. In many countries, such offences are not subject to criminal law. This situation violates our most basic notions of a just society. Fundamental workers' rights deserve better legal protection.

A just society requires that we avoid double standards. When a manager steals a worker's wages or illegally prevents workers from organising, state authorities should treat it as a serious crime, and show that they respect and defend working people.

Union busting, wage theft and violations of collective agreements are not petty crimes, but serious offences with serious consequences for workers. Criminalising them would send a strong message to workers that governments and public authorities stand with, protect and support them. By discouraging corporate criminal behaviour, governments can counter the appeal and empty promises of the far right.

This report maps the criminalisation of labour rights in Europe. This mapping reveals both its promise and its limitations. Many countries have adopted measures to criminalise grave labour offences. As such, three countries (BE, NO, PL) have criminal sanctions for wage theft, eight (BE, BG, FR, IT, NO, PT, ES, SE) for union busting and two (BE, FR) for violations of collective agreements.

At the same time, data on the actual implementation and criminal prosecution is sparse. It seems that most violations are dealt with through civil or administrative proceedings.

The report also shows that the European Union can encourage European countries to criminalise certain labour law offences, as it has done in relation to human trafficking and the illegal employment of third-country nationals.

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A fair society requires consistent and robust legal protection of workers' rights. When employers engage in wage theft, union busting or disrespect for collective agreements, these actions should be treated as serious criminal offences. Strong enforcement would not only reaffirm the state's commitment to protecting working people, but also act as a deterrent to corporate misconduct.

By criminalising these offences and ensuring accountability, governments send a clear message of solidarity and support to workers.

Criminal vs civil law: what's the difference?

The essential difference between civil law and criminal law is that the former seeks to resolve disputes between private parties, whereas the latter seeks to punish persons who have committed an offence against the State, which includes offences against individuals. This means criminal law aims to determine guilt and impose penalties for public offences, and the burden of proof lies with the State. In civil proceedings, the aim is for private parties to seek compensation or enforcement of rights and the evidence must be provided by the plaintiff.

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1 Mapping national practices of criminalisation of labour offences

Labour offences are criminalised in many European countries. For example, some countries impose criminal sanctions for (1) wage theft, (2) union busting and (3) violations of collective agreements.

Wage theft	Union busting	Violations of collective agreements
<ul style="list-style-type: none">• Belgium• Norway• Poland	<ul style="list-style-type: none">• Belgium• Bulgaria• France• Italy• Norway• Portugal• Spain• Sweden	<ul style="list-style-type: none">• Belgium• France

1.1 Wage theft

Wage theft is the unlawful failure or refusal of employers to pay workers their full wages. It can be a simple refusal to pay the agreed or minimum wage, but it can also include refusal to pay overtime, illegal deductions, withholding of tips, or misclassification of workers. In Europe, wage theft is usually dealt with through civil or administrative proceedings. In at least three countries, wage theft is also criminalised:

In **Belgium**, wage theft can be classified as an offence under the Social Criminal Code (SCC) when it involves serious violations of workers' rights or social security obligations. Such offences include deliberate non-payment or withholding of wages, with intent being a key factor. The evidence must clearly show that the employer has deliberately or negligently failed to meet its wage

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obligations, especially in serious or repeated cases. Penalties include imprisonment (six months to three years) or fines of between €4,800 and €56,000.

Case: In, the CEO of a construction company was charged with multiple counts of labour fraud and human trafficking. The charges carried severe penalties, with the CEO facing up to one year in prison and fines of up to €80,000.

Norway has explicitly criminalised wage theft since 1 January 2022, distinguishing between ordinary and gross cases. Ordinary wage theft is the intentional withholding of agreed or legally required wages, punishable by fines or up to two years' imprisonment. Gross wage theft takes into account the amount withheld, the history of the employer and the vulnerability of the worker, and this can result in up to six years' imprisonment. Convictions require clear evidence of wilful or negligent withholding, and employees must report issues for an investigation to take place.

Case: The first conviction occurred in late 2023, when a restaurant owner in Askim, Østfold, was sentenced to 30 days' suspended imprisonment and ordered to pay almost NOK 250,000 (about €21,500) in compensation for withholding wages from employees.

The **Polish** Penal Code criminalises wage theft under Article 218 §1a, which targets employers who deliberately or repeatedly fail to pay wages or underpay their employees. Repeated offences require evidence of intentional non-payment or wrongful payment. Convictions depend on complaints or investigations by bodies such as the National Labour Inspectorate. Penalties include fines, up to two years' imprisonment or restriction of liberty, including community service. In 2022, wage theft accounted for 40% of labour complaints, but courts often throw out cases for insufficient 'social harm', complicating enforcement efforts.

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1.2 Union Busting

Union busting refers to employer practices that prevent and discourage workers from forming, joining or participating in trade unions. Such practices often violate the right to freedom of association or interfere with trade union activities, including discriminating against trade union members on the basis of their union membership. Such violations are commonly treated as criminal offences throughout Europe.

In **Belgium**, trade union busting is criminalised under the Social Criminal Code (SCC), with penalties for violations relating to the establishment of works councils, health and safety committees, trade union delegations (where required by collective agreement), European Works Councils and negotiations with trade unions. Failure to respect information and consultation rights is also punishable, particularly in relation to psychosocial risk prevention. include fines ranging from €50 to €2,000. Convictions require evidence of intentional interference, supported by testimony or reports.

Bulgaria recently (August 2023) passed a law criminalising anti-union behaviour, including obstructing, repressing or discriminating against trade union members. Offenders face up to five years in prison or a fine of up to 5,000 levs (~\$5,000). Cases require clear evidence of actions such as dismissal or harassment because of union activities, and the employer must be aware that its actions are illegal. There must also be evidence that the employer's conduct caused harm or interfered with workers' trade union rights.

In **France**, the Labour Code criminalises obstruction of the exercise of trade union rights, such as obstructing the formation, functioning or activities of trade unions. French law also covers retaliation against workers or trade union representatives for their trade union activities, including dismissal or other forms of discrimination. Employers' actions must be intentional, knowingly unlawful and directly related to trade union activities. Sanctions include fines of up to €7,500 and up to one year's imprisonment for repeat offences.

The **Italian** Workers' Statute prohibits employer actions that obstruct trade union rights, including the right to strike. Other anti-union behaviour, such as coercion, threats or violence, can also be prosecuted. There must be evidence of the action and a clear link to trade union activities. Employers must also be

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aware of the illegal nature of their actions. Violations can result in criminal penalties, including imprisonment or fines.

The **Norwegian** Working Environment Act protects trade union rights, with penalties for violations ranging from fines to imprisonment. Prosecutors must prove intentional or grossly negligent behaviour directly related to workers' trade union activities. Penalties range from fines to imprisonment. Companies can also be held liable, with penalties including fines and possible restrictions on operations.

The **Portuguese** Labour Code prohibits employer interference in trade union activities and protects the right of workers to form and join trade unions. Employers who unjustifiably obstruct trade union activities commit a very serious offence. Such violations can lead to civil and possibly criminal liability.

Case: Violations of union busting are mostly dealt with through civil or administrative proceedings rather than criminal prosecution. For example, in 2022, the Évora Court of Appeal ruled that an employer's attempt to replace striking workers by transferring them to other workplaces violated the Labour Code's prohibition on undermining the effects of a strike (Cuatrecasas, 2022). Although this case deals with union-related issues, it did not involve criminal charges against the employer.

In **Spain**, the Penal Code criminalises actions that violate workers' rights related to strikes, trade union activities and collective bargaining. The employer's actions must be intentional and directly related to trade union activities, such as retaliation or dismissal. In addition, the employer must have known that its actions were illegal. Penalties range from six months' to two years' imprisonment. If there is coercion, this can be increased to three years.

Case: In 2023, the owner of Groundl España SL was sentenced to three months in prison for threatening to cut the workforce by 25% if the CCOO union won the elections. The court found that the workers' rights had been violated, based on audio recordings that confirmed the clear intention to intimidate.

The **Swedish** Co-Determination Act (MBL) protects workers' right to organise and prohibits interference and retaliation. Employers can be fined or imprisoned for serious violations. Cases must be substantiated and show a clear intention

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to interfere with trade union rights, knowledge of the illegality of the action and damage caused.

Although union busting is a criminal offence in many European countries, there is little data on the frequency of prosecutions. There is also little public reporting of such cases. This is probably due to the fact that many of these cases are settled through civil or administrative procedures, and there is a lack of knowledge and experience among the parties involved.

1.3 Violation of collective bargaining agreements

Finally, breaches of collective agreements can also be criminalised. A necessary condition for this, however, is that such agreements are declared to be universally binding. Where collective agreements take the form of civil law contracts, they bind only the signatory parties and are therefore subject to civil law proceedings. Accordingly, there are fewer examples of countries doing this.

In **Belgium**, breaches of general CBAs are subject to criminal sanctions if they relate to pay, working conditions or (fundamental) workers' rights. Penalties range from fines (up to €48,000) to imprisonment for up to three years, depending on the seriousness of the offence (level 2 to level 4). The offence must be intentional or grossly negligent, supported by evidence such as employee testimony or labour authority reports. Legal action can be taken by workers, trade unions or labour authorities. Again, the number of reported cases is low because breaches of CBAs generally result in civil and administrative penalties, such as fines.

In **France**, breaches of collective agreements can be prosecuted in the case of failure to pay the remuneration provided for in collective agreements, or where workers have been exploited as a result of egregious breaches of collective agreements. Such violations must be intentional or negligent, cause harm to workers, and remain unremedied after notification. Employers can be fined up to €750 per worker for failing to comply with the remuneration provisions.

2 European law on the criminalisation of labour offences

European countries have a wide margin of discretion in enforcing EU labour law. Typically, EU directives require Member States to introduce sanctions that are 'proportionate, dissuasive and effective', without further elaboration. However, two EU legal instruments deal with the criminalisation of labour-related offences.

First, **Directive 2011/36/EU** on "Preventing and Combating Trafficking in Human Beings and Protecting its Victims" focuses on the criminalisation of trafficking in human beings, in particular for labour exploitation, and provides for criminal proceedings for specific labour offences: (1) trafficking for labour exploitation; (2) exploitation through coercion, deception or abuse of vulnerability; and (3) degrading or unsafe working conditions.

Criminal sanctions require evidence of these practices and proof that the employer knowingly engaged in or facilitated labour exploitation. The Directive ensures that criminal sanctions, including imprisonment, fines and confiscation of assets, can be applied to employers involved in trafficking and labour exploitation. Victim protection is essential to ensure their safety, legal assistance and protection from prosecution for related offences.

While the Directive requires criminalisation, under-reporting and variations in enforcement make it difficult to obtain accurate data on the number of cases and convictions. According to a study commissioned by the European Parliament, "low levels of investigation, few successful prosecutions and low conviction rates remain a common and recurrent pattern across Member States" (European Parliament, 2021).

Second, the **Employer Sanctions Directive 2009/52/EC** on "Sanctions and measures against employers of illegally staying third-country nationals" addresses the issue of the illegal employment of third-country nationals and aims to protect vulnerable undocumented workers by establishing criminal liability for exploitative employers.

The instrument provides for criminal proceedings for certain labour-related offences. These include: knowingly employing undocumented workers; failure to pay wages/benefits; producing fraudulent documents; failure to verify the legal

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status of workers; intentional exploitation of workers; obstruction of labour inspections; and repeated illegal employment practices. Criminal sanctions can range from fines, penalties, imprisonment, and a ban on recruitment, to closure of the business.

Directive 2009/52/EC requires Member States to ensure that authorities have the necessary powers and resources to carry out workplace inspections for illegal employment practices. At the same time, workers involved in illegal employment should not be penalised for their status and must have access to legal support and safe accommodation. The whole process aims to ensure that employers are held accountable, with deterrent sanctions to prevent further violations.

However, many challenges to the implementation of the Directive have been identified. Financial and criminal penalties for employers are insufficient and do not deter exploitation, as the benefits of undeclared work outweigh the penalties. Furthermore, the lack of sufficient controls and low complaint rates mean that sanctions are rarely applied. In addition, sanctions often penalise workers without paying sufficient attention to the protection of vulnerable workers, such as women, in sectors such as agriculture, construction or domestic work. Finally, the lack of sufficient controls and low complaint rates mean that sanctions are rarely applied (ETUC, 2021).



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